

DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: 04/10/2012
POSITION: Neutral

BILL NUMBER: AB 2103
AUTHOR: Ammiano, Tom

BILL SUMMARY: Employment: wages and hours: overtime.

This bill would amend provisions related to overtime calculations for nonexempt salaried employees to specify that payment of a fixed salary to a nonexempt employee constitutes compensation only for the employee's regular, non overtime hours, regardless of any private agreement.

FISCAL SUMMARY

This bill would not result in any cost to the state.

COMMENTS

The Department of Finance is neutral on this bill because it would clarify existing law related to the payment of overtime for nonexempt salaried employees.

Existing law requires that overtime be paid to a nonexempt employee for any hours worked after 8 hours in one workday or after 40 hours in one work week. Existing law provides that, for a nonexempt full-time salaried employee, the employee's regular rate of pay is calculated by dividing the weekly salary by 40. The overtime rate is then determined by multiplying this regular rate by 1.5.

Under existing law, the California Court of Appeal decided in the employer's favor in the case *Arechiga v. Dolores Press*, ruling that the agreement made between the employee and the employer that a payment of \$880 per week would provide compensation for 66 hours of work each week was valid under California overtime law and that no additional overtime compensation was owed. Critics of this decision argue that because existing state law defines the regular rate of pay for nonexempt salaried employees as 1/40th of the employee's weekly salary that this decision does not align with state law.

This bill would clarify the intent of the law by adding a provision specifying that payment of a fixed salary to a nonexempt employee shall be deemed to provide compensation only for the employee's regular, non overtime hours, regardless of any private agreement to the contrary.

Any local government costs resulting from the mandate in this measure would not be state-reimbursable because the mandate only involves the definition of a crime or the penalty for conviction of a crime.

Analyst/Principal (0241) J.Morozumi	Date	Program Budget Manager Lisa Ann Mangat	Date
Department Deputy Director		Date	
Governor's Office:	By:	Date:	Position Approved _____ Position Disapproved _____
BILL ANALYSIS			Form DF-43 (Rev 03/95 Buff)

BILL ANALYSIS--(CONTINUED)

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Code/Department Agency or Revenue Type	SO	(Fiscal Impact by Fiscal Year)					Fund Code
	LA	(Dollars in Thousands)					
	CO	PROP					
	RV	98	FC	2011-2012 FC	2012-2013 FC	2013-2014	
7350/DIR	SO	No		-----	No/Minor Fiscal Impact	-----	3152
<u>Fund Code</u>	<u>Title</u>						
3152	Labor Enforcement and Compliance Fund						